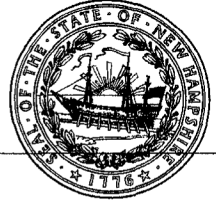




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

May 16, 2005

Dale Smith  
PO Box 326  
Stoddard, NH 03464

Re: Docket No. AF 04-080 Motion to Accept Settlement Agreement

Dear Mr. Smith:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on May 12, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**

Michael P. Sciafani,  
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Lynn Woodard, DES WMD  
Thomas Beaulieu, DES WMD  
Tammy Calligandes, DES WMD

Dale Smith  
P.O. Box 326  
Stoddard, NH 03464

**ADMINISTRATIVE FINE**  
**No. AF 04-080**

Re: Mill Village Country Store, Route 123  
Stoddard, NH -UST ID #0-113473

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Dale Smith, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Dale Smith is the registered facility owner of three compartment underground storage tank ("UST") systems at the Mill Village Country Store facility ("the Facility"), further identified as UST #0-113473, located on real property at Route 123, Stoddard, NH ("the Property").
3. On September 10, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-080 ("the Notice") to Dale Smith, seeking fines totaling \$3,100 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Dale Smith for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for all three UST compartments in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$1,500.
5. The Notice further cited Dale Smith for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on all three compartments of the UST. Pursuant to Env-C 607.05(j) the Division sought a fine of \$600.
6. The Notice further cited Dale Smith for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for the UST and for failing to conduct the leak monitor's annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000.
7. In order to settle this matter, the Division and Dale Smith have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

8. Of the proposed fine, in the amount of \$3,100, 20% or \$620 shall be suspended due to the Dale Smith's cooperation in returning the Facility to a compliance status. An additional 20% or \$620 shall be suspended due to the Facility's small business status.

9. The suspended portion of the proposed fine in the amount of \$1,240 is contingent upon Dale Smith maintaining the subject facility in compliance with Env-Wm 1401 for a period of two years from the date of execution of this document. If Dale Smith fails to maintain compliance during the two-year period, the suspended portion of the proposed fine, in the amount of \$1,240 shall become due and payable immediately. If Dale Smith maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

10. Dale Smith agrees to pay the remaining \$1,860 upon execution of this Agreement by Dale Smith.

11. Payment under Paragraph #10, and any payment that becomes due pursuant to Paragraph # 9 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

13. By executing this Agreement, Dale Smith waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

14. The effective date of this Agreement will be the date on which it is signed by Dale Smith, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

± AF  
04-080

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Dale Smith

**COPY**

Dale Smith, Owner

4/29/05

Date

DES Waste Management Division

**COPY**

Anthony Giunta, Director

5/11/05

Date

This Motion to Accept Settlement agreement is granted this 12th day of May, 2005.

**COPY**  
for Michael P. Nolin, 24 Comm.  
Michael P. Nolin, Commissioner  
Department of Environmental Services